

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of |) | |
| |) | |
| DAISY MANUFACTURING COMPANY, |) | CPSC Docket No.: 02-2 |
| Inc., doing business as Daisy Outdoor |) | |
| Products |) | |
| 400 West Stribling Drive |) | |
| Rogers, Arkansas 72756 |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

COMPLAINT

Nature of Proceedings

1. This is an administrative proceeding pursuant to Section 15 of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. § 1274, and Section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2064, for public notification and remedial action to protect the public from substantial risks of injury and substantial product hazards created by Respondent Daisy Manufacturing Company, Inc.'s Powerline Airguns.

2. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission, 16 C.F.R. Part 1025.

Jurisdiction

3. This proceeding is instituted pursuant to the authority contained in Sections 15(c), (d) and (f) of the CPSA, 15 U.S.C. §§ 2064(c), (d) and (f), and Sections 15(c)(1), (2) and (e) of the FHSA, 15 U.S.C. §§ 1274 (c)(1), (2) and (e).

Parties

4. Complaint Counsel is the staff of the Legal Division of the Office of Compliance (hereinafter referred to as “Complaint Counsel”) of the United States Consumer Product Safety Commission (hereinafter referred to as “The Commission”), an independent regulatory commission established by Section 4 of the CPSA. 15 U.S.C. § 2053.

5. Respondent Daisy Manufacturing Company, Inc. (hereinafter referred to as “Daisy”) is a Delaware Corporation, with its principal place of business located at 400 West Stribling Drive, Rogers, Arkansas.

6. Daisy “manufactures” Powerline Airguns and is, therefore, a “manufacturer” of consumer products as that term is defined in the CPSA, 15 U.S.C. § 2052(a)(4).

The Consumer Product

7. The Daisy Powerline Airgun is a pneumatic powered or carbon dioxide (“CO₂”) charged gun designed to shoot BBs or pellets at a rate over 350 feet per second (fps). From September, 1972 to January, 2001, Daisy manufactured approximately 4,925,353 model 880 Powerline Airguns including the following models and product numbers: 880, 881, 882, 1880, 1881, 9072, 9082, 9083, 9093, 9393, 9382, 3305, 3480, 3933, 1455 and 5150. Daisy continues to manufacture the model 880 Powerline Airgun.

8. From 1984 through January, 2001, Daisy manufactured approximately 2,353,798 model 856 Powerline Airguns including the following models and product numbers: 860, 856, 2856, 7856 and 990. Daisy continues to manufacture the model 856

Powerline Airgun. (All models recited in paragraphs 7 and 8 above are hereinafter referred to as “Daisy Powerline Airguns.”)

9. The retail cost of the Daisy Powerline Airgun currently being sold varies from approximately \$39.95 to \$67.95.

10. Daisy has and continues to produce and distribute the Powerline Airguns in United States commerce for sale to a consumer for use in or around a permanent or temporary household or residence, in recreation or otherwise or for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation or otherwise. These airguns are, therefore, “consumer products” that are “distributed in commerce.” 15 U.S.C. § 2052(a)(1) and (11).

COUNT 1

The Daisy Powerline Airguns Contain Defects

Which Creates a Substantial Product Hazard

Defect

11. Paragraphs 1 through 10 are hereby realleged, and incorporated by reference as though fully set forth herein.

12. A user can load 50 to 100 BBs through a loading door on the Daisy Powerline Airguns, and into the magazine reservoir. The consumer may then pull a bolt handle toward the rear to cock the gun, and close a pump valve. When the muzzle is raised, at least 45° above the horizon, and the gun is not tilted towards either side, BBs move from the magazine, via gravity, onto a feed ramp, and to a loading port. This

allows a magnetic bolt tip to pick up a BB from the feed ramp. The user can then close the bolt by pushing the handle forward, and chamber the BB into the rifle.

On the pneumatic versions of these airguns, the user provides power to the Daisy Powerline Airguns by pumping the forearm lever on the gun. This pumping process builds air pressure and determines the speed and power with which the projectile is ultimately expelled from the airgun. On the CO₂ cartridge versions of the gun, the consumer can insert a replaceable CO₂ cartridge which provides all the power needed to expel the projectile.

13. The Daisy Powerline Airguns have a rifle barrel, which is concentrically supported and surrounded by an outer barrel casing. These airguns have a “virtual magazine”, whose borders consist of the receiver halves, a casing surrounding the cylindrical pump that holds the projectile propellant, the outer barrel casing, and the inner rifle barrel’s forward support tab. The Daisy design permits BBs to move freely around the inside of the magazine area.

14. During normal use of the Daisy Powerline Airguns, BBs may become lodged within the “virtual magazine” of the gun. A consumer using the gun may fire the gun repeatedly or shake the gun and receive no visual or audible indication that the airgun is still loaded.

15. Although Daisy made some changes to the Powerline Airguns to try to lessen the likelihood that BBs will lodge in the gun, BBs can still lodge inside of them. The Daisy Powerline Airguns design, and manufacturing variances, prevent BBs from loading into the firing chamber and lead consumers to believe the airgun is empty, are,

therefore, defective within the meaning of Section 15 of the CPSA, 15 U.S.C. § 2064, and Section 15 of the FHSA, 15 U.S.C. § 1274.

16. Because these Daisy airguns can lodge BBs or fail to feed BBs into the firing chamber under normal conditions of use, consumers may be unaware when a BB loads unless they look into the loading port. Daisy made design decisions that impair the ability of the user to ascertain whether a BB is loaded. Daisy manufactures BBs that are silver in color. The Powerline Airgun's feed ramp is made of a zinc material. Due to the color similarity, a user operating the airgun rapidly may not be able to discern the presence of a BB even if he is looking directly into the loading port. Further, Daisy designed the airgun so a user can install an optional riflescope on top of the receiver halves and over the loading port. The placement of the riflescope can obscure the user's ability to see a BB in the loading port.

17. Daisy's design relies unduly on consumers to see a BB in the loading port and then interferes with that ability in reasonably foreseeable circumstances. This design constitutes a defect under Section 15 of the CPSA, 15 U.S.C. § 2064, and Section 15 of the FHSA, 15 U.S.C. § 1274.

18. Daisy's Powerline Airguns use a safety mechanism that does not automatically engage when the airgun is loaded and ready to fire. An automatic safety design would prevent against accidental discharge.

19. The failure to incorporate an automatic safety into the Daisy Powerline Airgun constitutes a design defect under Section 15 of the CPSA, 15 U.S.C. § 2064, and Section 15 of the FHSA, 15 U.S.C. § 1274.

Substantial Risk of Injury

20. All of the approximately 7,279,151 Daisy Powerline Airguns, and the Powerline Airguns currently being sold, contain the defects alleged in paragraphs 11 through 19 above.

21. Most of the consumers using these airguns will be children or young adults. It is likely that these consumers will operate the gun rapidly and not continue to check the loading port to determine whether any BBs are feeding into the chamber when they believe the airgun is no longer loaded. It is also reasonably foreseeable consumers, during use, will be less careful with a gun they believe is not loaded. A BB that had previously been lodged or misfed can then be loaded, and fired from the airgun. Under these circumstances, BBs are likely to be fired at and strike the consumer or another person in the vicinity.

22. It is likely consumers will carry and handle the Daisy Powerline Airguns when they are cocked and loaded. Since these airguns do not have an automatic safety, it is likely the gun will be discharged during handling in the direction of the user or another person in the vicinity.

23. At close range, BBs fired from these airguns can penetrate tissue and bone, damaging internal organs, such as the brain, heart, liver, spleen, stomach, bowel and colon. The Commission has learned of at least 15 deaths and 171 serious injuries, including brain damage and permanent paralysis, caused by the defects in the Daisy Powerline Airguns. Most of these injuries were to children under the age of 18.

24. The defects in the Daisy Powerline Airgun create a substantial risk of injury, and the airguns create a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

COUNT 2

The Daisy Powerline Airguns Create
a Substantial Risk of Injury to Children

25. Paragraphs 1 through 24 are hereby realleged, and incorporated by reference as though fully set forth herein.

26. The Daisy Powerline Airguns were marketed for, and intended for the use of, children. Although Daisy marketed the airguns initially with no age recommendation, it later labeled them for users 14 and older and eventually 16 and older. A substantial number of the airguns are intended for use by children.

27. Given the pattern of the defects alleged above, the number of Powerline Airguns distributed in commerce, and the likelihood of further serious injury and death, especially to children, these airguns present a substantial risk of injury to children. Sections 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. § 1274(c)(1) and (c)(2).

Relief Sought

Wherefore, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that Respondent Daisy's Powerline Airgun presents a "substantial product hazard" within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

B. Determine that Respondent Daisy's Powerline Airgun presents a "substantial risk of injury to children" within the meaning of Sections 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. § 1274(c)(1) and (c)(2).

C. Determine that public notification under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c), and Section 15(c)(1) is required to protect the public adequately from the substantial product hazard and substantial risk of injury to children presented by the Powerline Airgun. We also want to prevent future distribution and order that the Respondents:

- (1) Give prompt public notice that the Daisy Powerline Airgun presents a serious injury and death hazard to consumers and of the remedies available to remove the risk of injury and death;
- (2) Mail such notice to each person who is or has been a distributor or retailer of the Daisy Powerline Airgun;
- (3) Mail such notice to every person to whom Respondents know the Daisy Powerline Airgun were delivered or sold; and
- (4) Include in the notice required by (1), (2) and (3) above a complete description of the hazard presented, a warning to stop using the Daisy Powerline Airgun immediately; and clear instructions to inform consumers how to avail themselves of any remedy ordered by the Commission.

D. Determine that action under Section 15(d) of the CPSA, 15 U.S.C. § 2064(d), and Section 15(c)(2) of the FHSA, 15 U.S.C. § 1274(c)(2) is in the public interest and order Respondents:

(1) To cease distribution of all Daisy Powerline Airguns until such time as all defects in the airguns are eliminated and the risk of injury reduced in a manner satisfactory to the Commission.

(2) With respect to Daisy Powerline Airguns already manufactured and distributed in commerce, Daisy must

(a) elect to repair all the Powerline Airguns so they will not create a serious injury and death hazard; replace all the Powerline Airguns with a like or equivalent product which will not create a serious injury or death hazard; or refund to consumers the purchase price of the Powerline Airgun;

(3) make no charge to consumers and reimburse them for any foreseeable expenses incurred in availing themselves of any remedy provided under any order issued in this matter;

(4) reimburse distributors and dealers for expenses in connection with carrying out any Commission Order issued in this matter;

(5) submit a plan satisfactory to the Commission, within ten calendar (10) days of service of the final Order, directing that actions specified in paragraphs D(2) through D(4) above be taken in a timely manner;

(6) submit monthly reports documenting progress of the corrective action program;

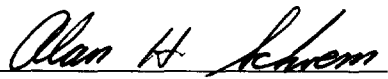
(7) For a period of five (5) years after entry of a Final Order in this matter, keep records of its actions taken to comply with paragraphs D(2) through D(4) above, and supply these records upon request to the Commission for the purpose of monitoring compliance with the Final Order.

E. Daisy shall notify the Commission at least 60 days prior to any change in their business (such as incorporation, dissolution, assignment, sale or petition for bankruptcy) that results in, or is intended to result in, the emergence of successor ownership, the creation or dissolution of subsidiaries, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission.

F. Daisy shall take such other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA and FHSA.

Issued by Order of the Commission

Dated this 30th day of October 2001


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CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to the within action. I hereby certify that on October 26, 2001, I have served the attached document described as **COMPLAINT** on all parties and participants of record in these proceedings as follows:

SEE ATTACHED SERVICE LIST

— By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing for mailing. Under the practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepared in the ordinary course of business.

X By Personal Service. I delivered such envelope by hand to the addressee.

Executed on October 30, 2001, at Bethesda, Maryland. Time:

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Print Name

Signature

For: U.S. Consumer Product Safety Commission

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